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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO PEREZ,

Defendant and Appellant.

H037304

(Santa Clara County

Super. Ct. No. C1079780)

Defendant Francisco Perez, a known Sureno Por Vida gang member, was involved in a fight in San Jose over a 49ers jacket worn by the victim's girlfriend. During the fight, he hit the victim over the head with a bottle and kicked him multiple times after he fell to the ground. The defendant also took a phone that belonged to the victim which had fallen out of the jacket. He told the victim that he was a Surenos gang member and was going to kill him. After he fled the scene of the fight, police apprehended him in a nearby garage. The Santa Clara County District Attorney charged the Defendant with two counts of assault with deadly weapon, a bottle, two counts of robbery, one count of dissuading a witness by use of force or threat and one count of participating in a criminal street gang. (Pen. Code, § 245, subd. (a)(1); 211-212.5, subd. (c), 136.1, subd. (c)(1), 186.22, subd. (a).) It was further alleged that all of the charges were committed for the benefit of a criminal street gang (Pen. Code, § 186.22, subds. (b)(1)(C), (b)(4)), that in

one assault and one robbery defendant had personally inflicted great bodily injury, and that he had a strike prior and a serious felony prior. (Pen. Code, §§ 667, subd. (a), 667, subds. (b)-(i), 1170.12.)

After the prosecutor agreed to dismiss the gang enhancement which would have required a life sentence if proven, defendant plead guilty to all the remaining charges and enhancements and admitted the prior conviction allegations. After denying a *Marsden*¹ motion filed by defendant in an attempt to withdraw his plea, the trial court sentenced defendant pursuant to the plea agreement to 21 years in prison. This appeal ensued after defendant sought and received permission from this court to file a late notice of appeal. The notice of appeal stated that the basis of his appeal was sentencing error committed by the trial court, arose after entry of a guilty plea, and does not challenge the validity of the plea.

On appeal, appointed counsel filed an opening brief which states the case and the facts but raises no specific issues. We notified defendant of his right to submit written argument in his own behalf within 30 days. On January 23, 2012, we received a handwritten letter from defendant. In the letter, the defendant raises some of the issues raised and rejected in the *Marden* motion considered by the trial court. Specifically, the defendant contends that he was very intoxicated during the crimes at issue, and that the charges in the complaint relating to the victim's girlfriend were not supported by the evidence. Neither of these contentions raises an arguable issue in an appeal taken on grounds that arose after entry of a guilty plea, and do not challenge the validity of the plea.

Pursuant to our obligation as set forth in *People v. Wende* (1979) 25 Cal.3d 436, and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the record but have found no arguable issues on appeal. Therefore, we will affirm the judgment.

¹ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.